

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

**Bay State Gas Company**

**D.T.E. 05-27**

**ATTORNEY GENERAL'S MOTION FOR LEAVE TO SUBMIT ADDITIONAL  
ARGUMENT IN SUPPORT OF HIS MOTION TO COMPEL**

Pursuant to 220 C.M.R. § 1.04(5) and based on new information, the Attorney General seeks leave to supplement his earlier Motion to Compel filed against the Bay State Gas Company (“Bay State” or “Company”). The Company has supplied additional reasons to grant the relief requested by the Attorney General.

For the first time in this proceeding in its June 21, 2005, Opposition, the Company finally discloses that it has conducted a “reasonable search” and believes it does not have further documents responsive to the Attorney General’s request in AG 2-18. At no time during the discovery conference negotiations did the Company state that these documents did not exist or that it had searched for them.<sup>1</sup> Instead, the Company repeatedly invited the Attorney General to search thousands of pages of files in different geographic locations to find responsive documents

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<sup>1</sup> Since the Company refuses to file an actual answer to AG 2-18 sponsored by a Company witness, the Attorney General does not know the responsible witness to cross-examine during hearings on this surprising lack of oversight on the distribution system. The Company claims the system is plagued with corrosion problems, but has seemingly not bothered to investigate the cause for the corrosion, or if the Company’s knows, it does not want to share that information with the Department and the intervenors.

the Company now claims the Attorney General would never find! While feigning compliance with the discovery process, the Company offered the Attorney General to conduct a time-consuming and useless search. As stated by the Attorney General in the June 2, 2005, procedural conference, offers to inspect Bay State's records are an ineffective solution to unanswered discovery until the Company first identifies which documents exist and do not exist.

Although on June 17, 2005, the Company finally provided some sample computer reports and some maps to review, this very limited response came only after the Attorney General filed a motion to compel, well over a month after the Attorney General submitted his discovery and just days before the close of discovery. On June 9, 2005, the Company sent to the Attorney General two sample work dossiers for review, each containing over a hundred pages. These files are just two of the hundreds or thousands of similar files that the Company wanted the Attorney General manually to review in the search for other potentially responsive information.<sup>2</sup> It should be the Company, rather than the Department or the intervenors, that guides the parties through Bay State's voluminous business records for the requested information. These types of records are precisely the types of documents that could be reviewed during a deposition of a Company employee with general knowledge of the files and the corrosion problems in the distribution system. However, the Company has opposed the Attorney Generals' June 2, 2005, motion for depositions.

Taken its behavior as a whole, the Company continues to pursue a strategy of impeding

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<sup>2</sup> As with the June 17, 2005, materials, the Company did not send the response or the cover letter to the service list. The Company also did not file the attachments or the cover letter with the secretary of the Department, but instead sent a copy of only the cover letters to the Hearing Officer. This tactic limited access to the documents, so neither the Department nor the other intervenors had a full opportunity to explore issues raised by the materials in discovery.

the meaningful investigation of the cause of corrosion on its distribution system. The Department should not allow the Company to engage in such dilatory tactics without any prospect of material consequences.

**WHEREFORE:** The Attorney General requests that the Department grant leave to file this supplemental information in support of the Attorney General's Motion to Compel.

Respectfully Submitted,

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By:

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